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# Supreme Court of the United States

OCTOBER TERM, 1937

## No. 28

STATE OF TEXAS AND J. C. CLOPTON AND BULLOCK HYDE, RECEIVERS, ETC.,
*Petitioners,*

*vs.*

DAVID DONOGHUE, TRUSTEE OF TRINITY REFINING COMPANY, DEBTOR.

**Motion of David Donoghue, Trustee, Under an Order to Liquidate, to Be Substituted as Respondent for David Donoghue, Trustee.**

R. W. KELLOUGH,
Tulsa, Oklahoma,
*Attorney for Movant.*

H. T. MCGOWN,
H. L. LOGAN, JR.,
Fort Worth, Texas,
*Of Counsel.*

# Supreme Court of the United States

OCTOBER TERM, 1937

## No. 28

STATE OF TEXAS AND J. C. CLOPTON AND BULLOCK HYDE, RECEIVERS, ETC.
*Petitioners,*

VS.

DAVID DONOGHUE, TRUSTEE OF TRINITY REFINING COMPANY, DEBTOR,
*Respondent.*

**Motion of David Donoghue, Trustee, Under an Order to Liquidate, to Be Substituted as Respondent for David Donoghue, Trustee.**

*To the Honorable the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:*

Your petitioner, David Donoghue, Trustee, respectfully shows:

I

Your petitioner shows that he was heretofore and on the 18th day of December, 1935, appointed Trus-

tee of the estate and property of Trinity Refining Company, debtor, in a proceeding for the reorganization of a corporation, No. 1969, in bankruptcy, in the United States District Court for the Northern District of Texas; that he qualified and acted as such Trustee; that he was the respondent named and described in this cause and the writ of certiorari granted by this Honorable Court to the United States Circuit Court of Appeals for the Fifth Circuit.

II

Petitioner shows that on the 24th day of September, 1937, an order was entered by the Honorable District Court for the Northern District of Texas at Fort Worth, in Cause No. 1969, Trinity Refining Company, Debtor, for the liquidation of the estate and property of the debtor corporation under the provisions of Section 77B (c) (8) and Section 77B (k) of the Bankruptcy Act of the United States; a copy of said order is attached hereto and made a part hereof and marked "EXHIBIT A."

III

Petitioner shows that in pursuance of the terms of the order to liquidate aforesaid he was, on the 14th day of October, 1937, appointed Trustee at a meeting of the creditors called for that purpose in pursuance of Section 44 of the Bankruptcy Act; that he has qualified as such Trustee and is the duly

acting Trustee under the terms of the order to liquidate aforesaid.

IV

Petitioner says that by virtue of Section 46 of the Bankruptcy Act he should be substituted in his capacity as a Trustee under the order to liquidate aforesaid in lieu and instead of as Trustee before liquidation under the provisions of Section 77B; there is attached hereto and marked "EXHIBIT B" a copy of the order of the Honorable Glenn Smith, Referee, dated October 14, 1937, appointed petitioner Trustee, and there is attached hereto and marked "EXHIBIT C" a copy of the order of the Honorable Glenn Smith, Referee, dated October 14, 1937, approving the bond of petitioner as such Trustee.

V

Petitioner further says that, as Trustee under the order to liquidate aforesaid, he succeeded to all of the rights and powers of his former status as Trustee and that by virtue of the provisions of Section 77B (k) his appointment as Trustee is analogous and comparable to the appointment of a Trustee in general bankruptcy.

VI

Petitioner further says that upon his appointment as Trustee, under the order to liquidate, coun-

sel was appointed by the Court to represent petitioner in such capacity; that this cause is set down for submission to this Honorable Court and for argument during the week of the 18th of October, 1937; that petitioner desires that his change in status be made known to this Honorable Court and that petitioner be permitted to file a supplemental brief in such capacity for the purpose of supplementing the brief heretofore filed by petitioner in his former capacity.

WHEREFORE, this petitioner prays that an order be entered substituting him as respondent herein in his capacity as Trustee under an order to liquidate in lieu and instead of his former capacity as Trustee, and that he may have leave in such capacity to file a supplemental brief upon the propositions involved in this cause.

DAVID DONOGHUE, *Trustee.*

By R. W. Kellough
*Attorney.*

R. W. KELLOUGH, Tulsa, Oklahoma,
H. T. MCGOWN,
H. L. LOGAN, JR.,
Fort Worth, Texas,
*Of Counsel.*

I, R. W. KELLOUGH, duly appointed attorney for DAVID DONOGHUE, Trustee, hereby certify that a copy of this motion has been delivered in person to counsel for petitioners and to counsel for the original respondent in this cause.

R. W. Kellough

SWORN TO AND SUBSCRIBED before me this 15th day of October, A. D., 1937.

.....

Notary Public in and for Tarrant County, Texas.

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS,**

At Fort Worth.

---

In the Matter of TRINITY REFINING COMPANY, Debtor.

In Proceedings for the Reorganization of a Corporation.

---

No. 1939.

---

**Order Directing the Trustee to Liquidate the Estate of Debtor Corporation.**

---

On the 20th day of April, 1937, there came on to be heard the motion of H. U. Everett, D. K. Hutchcraft and Howard Hall, Secured Creditors' Committee, Trinity Refining Company, for an order directing the liquidation of the property and assets of the debtor corporation in this cause, in pursuance of the terms of Section 77b(k) of the Bankruptcy Act of the United States, as amended, and thereupon an order was entered on the 21st day of April, 1937, continuing the hearing thereon, reserving to movants the right to be heard thereon at such time as might be fixed and determined by the Court; on the

17th day of July, 1937, the motion again came on to be heard and by order made and entered as of that date it was thereupon continued to the 2nd day of August, 1937; upon said date the matter was again continued by order made and entered in this cause to the 21st day of August, 1937; upon said date it was again continued to the 15th day of September, 1937, by order made and entered in this cause; on the 15th day of September, 1937, it was not possible to be heard and it was thereupon continued until the 22nd day of September, 1937, at 10 o'clock in the forenoon.

On the 22nd day of September, 1937, the motion then came on to be heard and there appeared H. U. Everett, D. K. Hutchcraft and Howard Hall, Secured Creditors' Committee, Trinity Refining Company, by counsel, Trinity Refining Company, debtor corporation herein, by its officers in person and by counsel, David Donoghue, Trustee herein, in person and by counsel, The State of Texas, by W. J. Holt and Wm. C. Davis, Assistant Attorney Generals, the Department of Internal Revenue and W. A. Thomas, Collector, by J. L. Backstrom, Special Attorney of the United States, General American Tank Car Corporation, by counsel, John Tancred, Sr., in person, and Talco Pipe Line Company, by counsel.

Thereupon evidence was adduced and argument of counsel had and the Court finds that notice of the time, place and purpose of this hearing was duly given in the manner provided by the order hereto-

fore entered on the 1st day of April, 1937, as is evidenced by the order heretofore entered in this cause on the 20th day of April, 1937; That the order heretofore made and entered in this cause on the 15th day of January, 1936, purporting to confirm a plan of reorganization in this cause was not intended to confirm a completed plan of reorganization; that requisite acceptances of the plan of reorganization filed in this cause have not been secured or tendered in conformance with the plan of reorganization; that the debtor corporation is insolvent; and that it is not possible that an acceptable plan of reorganization can be filed or offered in this cause; and that the Court is of the opinion that the property and estate of the debtor corporation should be liquidated by directing the Trustee to liquidate the estate in pursuance of the provisions of Section 77-b(k) of the Bankruptcy Act of the United States, as amended, it is, therefore,

ORDERED—

That the order heretofore made and entered in this cause on the 15th day of January, 1936, approving and confirming the plan of reorganization proposed by the debtor corporation be set aside in so far as the said order purports to confirm a plan of reorganization in this cause, and it is further

ORDERED—

That the Trustee liquidate the estate of the debtor corporation herein pursuant to the provisions of Sec-

tion 77-b(c)(8) and Section 77-b(k) of the Bankruptcy Act of the United States, as amended, and it is further

ORDERED—

That this cause be referred to the Honorable Glenn Smith, one of the Referees of this Court, for all matters pertaining to the further administration and liquidation of the estate of the debtor corporation herein, except as to such matters as are herein specifically reserved, and it is further

ORDERED—

That the Honorable David Donoghue, Trustee, now in possession of the assets and property of debtor corporation under orders of this Court, be and remain in possession thereof as Trustee, pending the appointment of a Trustee or Trustees at the first meeting of creditors to be held by the Referee in pursuance of Section 77-b(k)(3) of the Bankruptcy Act of the United States, as amended, and it is further

ORDERED—

That all of the orders heretofore entered in this cause with respect to the possession and custody of the estate and property of the debtor corporation and/or the conduct of the business of debtor corporation by the Trustee be and remain in full and binding force and effect until the appointment of a Trustee or Trustees, as hereinabove ordered, and be it further

ORDERED—

That no orders shall be entered by the Referee, to whom the matter is here referred, or any action taken by the Honorable David Donoghue, Trustee, or the Trustee or Trustees to be hereafter appointed, as hereinabove ordered, with respect to certain crude oil or petroleum products now in storage in possession of the Trustee in this cause which shall in any manner conflict with or be violative of an order entered in Cause No. 28, October Term, 1937, Supreme Court of the United States, on the 3rd day of July, 1937, by the Honorable Benjamin M. Cordovo, Associate Justice, in the case of the State of Texas and J. C. Clopton and Bullock Hyder, Receivers vs. David Donoghue, Trustee, Trinity Refining Company, debtor, in which case the right of title and custody to the crude oil or petroleum products is involved, and be it further

ORDERED—

That all claims of creditors heretofore filed with the Honorable Glenn Smith as Special Master in this cause, shall be delivered to and filed with the Honorable Glenn Smith as Referee in Bankruptcy and shall be considered to be filed with the Referee as of the date of the delivery of the claims to the Referee by the Special Master and that the status of all claims heretofore passed upon and determined by the Honorable Glenn Smith as Special Master in this cause and as reflected by his reports as Special Master, heretofore filed in this cause, shall be

deemed to have been heard and determined with respect to the amount and status thereof, without reference to rights of priorities between the creditors whose claims are therein reported, or otherwise; all claims hereafter to be filed shall be proved, as provided in Section 57 of the Bankruptcy Act of the United States and in conformance with Section 77-b(k)(4) of the Bankruptcy Act, and it is further

ORDERED—

That there is reserved to this Court the right to hear and determine all matters with respect to allowances for Trustee's fees, counsel fees and disbursements to the Trustee herein, counsel for the Trustee, counsel for debtor corporation, creditors' committees and counsel for creditors' committees, and it is further

ORDERED—

That all applications for allowances for Trustee's fees, counsel fees and disbursements by the Trustee herein, counsel for the Trustee, counsel for debtor corporation, creditors' committees, and counsel therefor, shall be filed with the Clerk of this Court on or before the 2nd day of November, 1937, to be thereafter heard and determined by this Court at such date as may be convenient.

Dated at Fort Worth, Texas, this 24th day of September, A. D. 1937.

J. C. WILSON,
District Judge.

EXHIBIT B

**IN THE DISTRICT COURT OF THE UNITED STATES**
FOR THE NORTHERN DISTRICT OF TEXAS
AT FORT WORTH

---

Office of Glenn Smith, Referee in Bankruptcy,
Fort Worth, Texas

---

Appointment of Trustee

---

In the Matter of Trinity Refining Company, Debtor, No. 1939 in Bankruptcy.

At Fort Worth, in said District, on October 14, 1937, before me, Glenn Smith, Referee in Bankruptcy:

This being the day appointed by the Court for the first meeting of creditors under said Bankruptcy, and of which due notice has been given in the Gladewater Times, Gladewater, Texas, and by mailing notices to all creditors listed in the schedules, I, the undersigned Referee of said Court in Bankruptcy, sat at the time and place above mentioned, pursuant to such order, to take the proof of debts and for the choice of a Trustee under said bankruptcy, and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a Trustee of the bankrupt's estate, and therefore I

do hereby appoint David Donoghue of Fort Worth of the County of Tarrant and State of Texas, as Trustee of the same, and I do hereby fix the penal sum of his bond at $10,000.00.

GLENN SMITH,
Referee in Bankruptcy.

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EXHIBIT C

**IN THE DISTRICT COURT OF THE UNITED STATES**

FOR THE NORTHERN DISTRICT OF TEXAS AT FORT WORTH

---

Office of Glenn Smith, Referee in Bankruptcy, Fort Worth, Texas

---

At a Court of Bankruptcy, held in and for the Northern District of Texas, at Fort Worth, this 14th day of October, 1937.

Before Glenn Smith, Referee in Bankruptcy, in the District Court of the United States for the Northern District of Texas.

In the Matter of Trinity Refining Company, Debtor, Order Approving Trustee's Bond, No. 1939 in Bankruptcy.

It appearing to the Court that David Donoghue of Fort Worth, in said District, has been duly appointed Trustee of the estate of the above named bankrupt, and has given a Bond with sureties for the faithful performance of his official duties, in the amount fixed by the Court, to-wit, in the sum of Ten Thousand Dollars,

IT IS ORDERED, that the said bond be, and the same is hereby approved.

GLENN SMITH,
Referee in Bankruptcy.

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STATE OF TEXAS AND J. C. CLOPTON AND BULLOCK HYDE, RECEIVERS, ETC.,
*Petitioners,*

*vs.*

DAVID DONOGHUE, TRUSTEE OF TRINITY REFINING COMPANY, DEBTOR.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

**Supplemental Brief of David Donoghue, Trustee, following Order to Liquidate, Respondent.**

R. W. KELLOUGH,
Tulsa, Oklahoma,
*Attorney for Movant.*

H. T. MCGOWN,
H. L. LOGAN, JR.,
Fort Worth, Texas,
*Of Counsel.*

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